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FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Policies and Rules Implementing
the Telephone Disclosure and Dispute
Resolution Act

CC Docket No.
93-22

ORIGINAL

COMMENTS

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TABLE OF CONTENTS

SUMMARY	i
1. BellSouth and other LECs have limited ability to monitor IP compliance	2
2. Continued availability of the 800 SAC for delivery of information services facilitates evasion of the Commission's Rules and undermines public trust in 800 toll free calling	5
3. Numerous abusive practices are sheltered under the umbrella of the "tariffed charge" exception	7
4. Most of the Rule modifications contained in the FNPRM will produce some benefit and are supported by BellSouth	9
CONCLUSION	13

SUMMARY

BellSouth commends the Commission's efforts through this FNPRM to further curtail abuses which have persisted in the pay-per-call industry. BellSouth supports the majority of the Commission's proposals and believes that most of the modifications proposed by the Commission will help curb deceptive and unlawful practices. BellSouth concurs with modifications which require that presubscription agreements be in writing. BellSouth also supports modifications which preclude use of AIN as a billing mechanism absent agreement by the subscriber. In addition, BellSouth supports requirements that presubscribed information service charges be segregated on billing statements.

BellSouth does not support initiatives which would impose enforcement and compliance obligations on common carriers that transmit or bill for information services. BellSouth and other LEC billing agents face formidable obstacles in monitoring or otherwise influencing the conduct of IPs. For instance, BellSouth has no direct contractual relationship with the IP and often times does not know the identity of the IP. In addition, features of the mechanized billing system further limit BellSouth's ability to ensure IP compliance. BellSouth has no means of verifying the validity of the call data submitted by the IP or the

appropriateness of charges assessed. Moreover, if a billing record references a valid billing number and is correctly formulated, BellSouth has no basis for questioning the correctness of the underlying data.

BellSouth believes that in some instances even bolder measures than those proposed in this FNPRM are necessary. BellSouth encourages the Commission to pursue statutory amendments which would eliminate the 800 SAC for delivery of information services. In addition, the exemption for information services provided at a tariffed charge should also be eliminated or, at the very least, uniform standards should be adopted and enforced to govern such tariff filings.

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COMMENTS

BellSouth Telecommunications, Inc. ("BellSouth") submits these comments in response to the Order on Reconsideration and Further Notice of Proposed Rulemaking issued in the above-captioned proceeding ("FNPRM").¹ The Commission has proposed specific amendments to Sections 64.1501, 64.1504 and 64.1510 of the Rules, 47 C.F.R. §§64.1501, 64.1504 and 64.1510, in an effort to curtail certain abuses which have persisted in the pay-per-call industry. These changes impose further limitations on use of the 800 service access code (SAC) in the delivery of information services,² raise the legal standard for

¹ Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act, CC Docket No. 93-22, FCC 94-200, Order on Reconsideration and Further Notice of Proposed Rulemaking, released August 31, 1994.

² Within the context of this filing, the term "information services" encompasses audio information and entertainment programming and "live" services which would be pay-per-call services but for their inclusion within one of the specific enumerated exceptions under the Act and the Commission's Rules, i.e., services offered pursuant to a presubscription or comparable agreement and services offered

establishing a valid presubscription agreement and add new requirements related to consumer disclosure and billing. BellSouth applauds the Commission for this initiative and supports the majority of changes which have been proposed. Nevertheless, this Company is constrained to state that the FNPRM--even if adopted in its entirety--will be of only limited effect in curbing those abuses identified by BellSouth in its investigation of customer complaints. Bolder measures, to include a prohibition on use of the 800 SAC for delivery of information services and more vigorous Commission policing of the "tariffed charge" exception, are needed at a minimum to limit the access of minors to inappropriate programming and to curb the resourcefulness of those who would defraud the public.

DISCUSSION

1. BellSouth and other LECs have limited ability to monitor IP compliance.

The FNPRM concludes that because the Commission lacks direct control over the activities of information providers (IPs), it "must seek to curb abusive practices by imposing obligations on common carriers that transmit or bill their services."³ Whatever the theoretical appeal of this

for a tariffed charge. In addition, pay-per-call and other information services subject to the requirements of the TDDRA and the Commission's Rules are without exception jurisdictionally interstate, thus excluding LEC-provided offerings like 976 and N11 which are regulated by state commissions.

³ FNPRM at ¶30.

approach may be, in actuality BellSouth and other LEC billing agents face formidable obstacles in monitoring or otherwise influencing the conduct of IPs. BellSouth's billing and collection (B&C) services are offered under contract to interexchange carriers (IXCs) and billing clearinghouses. IXCs provide number assignment and transport services to IPs for the latter's provision of pay-per-call and other information services. IPs submit their service charges for billing to a service bureau, billing clearinghouse or IXC. If to a service bureau, that entity will subsequently submit such charges to a billing clearinghouse. The charges for these services are then submitted to BellSouth by the IXCs or billing clearinghouses for end user billing purposes. BellSouth has no direct contractual relationship with the IP in these instances, and does not know the identity of the IP or the programming content associated with specific pay-per-call or other information services submitted to it for billing. Indeed, as discussed more fully below, where these services are provided through a dialing pattern other than the 900 SAC they often cannot be differentiated from other message types.

The features incidental to a mechanized billing system further limit BellSouth's ability to insure IP compliance with statutory and regulatory requirements. BellSouth generally follows a set of national industry standards known

collectively as the Exchange Message Interface (EMI), which are developed by the Open Billing Forum (OBF) and are published and maintained by Bellcore. The EMI standards govern the transmission of telecommunications message information between LECs and IXCs/billing clearinghouses through unique record layouts that contain customer billing information. The prototypical record contains calling and called numbers, bill to number, type of call, date/time of call, duration of call, charge for call, jurisdiction and certain other data fields used for billing. The data for these fields are entered by the IXC/billing clearinghouse providing billing information. Because the calls in question are carried and completed by the IXC, BellSouth has no independent means of verifying the validity of call data submitted nor the appropriateness of the charges assessed. In many cases, the calls in question neither originate nor terminate in a geographical area served by BellSouth.⁴

BellSouth's billing system employs multiple edits to insure that billing records submitted by IXCs/billing clearinghouses are correctly formatted and reference a valid billing number. Assuming a record meets these parameters, BellSouth has no basis for questioning the correctness of the underlying data until and unless it is apprised of a dispute, usually through receipt of a customer complaint.

⁴ For example, a call from New York to California which is charged to a BellSouth calling card may well be submitted to BellSouth for billing by the IXC.

These circumstances apply to all message types billed by BellSouth, not simply to pay-per-call and other information services.

Within these constraints, BellSouth has taken steps to encourage the lawful provision of pay-per-call/information services and to mitigate the effects on customers when services are not so provisioned. BellSouth can and does require compliance with all statutory and regulatory requirements as a condition of each billing contract. BellSouth can and does respond to customer complaints, and it employs a liberal adjustment policy with respect to pay-per-call and similar services. More recently in the face of rising complaints, BellSouth made the internal decision to cease billing for information services provided through the 800 SAC. This policy became effective June 1, 1994. Apart from such measures, however, BellSouth cannot (and should not) become a private enforcer of IP compliance with TDDRA and Commission Rules. To the extent the FNPRM seeks to impose this responsibility on LEC billing agents, the effort will inevitably prove both misguided and ineffectual.

2. Continued availability of the 800 SAC for delivery of information services facilitates evasion of the Commission's Rules and undermines public trust in 800 toll free calling.

BellSouth's decision to cease billing for information services delivered using the 800 SAC was reached after numerous customer complaints of abusive marketing practices. Investigation undertaken by BellSouth has revealed some

provisioning arrangements which may violate current law and Commission Rules.⁵ Moreover, in many instances billing data provided to BellSouth failed to disclose the use of an 800 number in service provisioning.

Such experiences confirm that unscrupulous IPs will continue to capitalize on public association of the 800 SAC with toll free calling so long as these arrangements remain available. The likelihood that violations will be detected is remote--absent a customer complaint--and those that are detected face no serious impediment to reestablishing service under a different number and/or a different name. As the Commission rightly observes, blocking of the 800 SAC is not an option. Indeed, call aggregators (who are particularly victimized by these services) are prohibited

⁵ The following two are illustrative:

800 NUMBER TRANSFER TO 809 NUMBER

- a. Caller dials advertised 800 number and is connected to a recorded message. Message directs caller to press "1" if calling from a touch-tone phone.
- b. Caller presses "1" and is connected to a second recorded message. Second message advises caller to press "1" to obtain transfer to 809-xxx-xxxx.
- c. Caller presses "1", is transferred to 809 number and connected to the advertised information service.

800 NUMBER DIALED, BILLED AS 900 CALL

- a. Caller dials 800 number and reaches recorded message.
- b. Message advises that caller has reached the -----Calling Card Program. Caller is directed to enter area code and telephone number to obtain a discount calling card.
- c. Caller complies with instructions and is connected to information service. Caller is subsequently billed \$98.25 for the discount card. Called number appears as 900 SAC.

from blocking 800, which is used in several popular and highly publicized IXC access arrangements.

Perhaps the most pernicious effect, however, is the creation of public distrust in what has heretofore been a highly beneficial and widely used 800 service. A strong public interest exists in preserving the integrity of 800 toll free calling. Conversely, there is no compelling argument for permitting use of the 800 SAC in the delivery of information services.

BellSouth understands that a complete prohibition on employment of the 800 SAC in information services delivery is beyond the immediate scope of this rulemaking and, in all probability, would require legislative action. Nevertheless, BellSouth urges the Commission to consider sponsorship of such an initiative as the most promising measure for eliminating misuse of this dialing arrangement.⁶

3. Numerous abusive practices are sheltered under the umbrella of the "tariffed charge" exception.

The exemption for information services provided at a tariffed charge likewise affords a vehicle for evading the letter and spirit of the TDDRA and Commission Rules. BellSouth has encountered instances where it is difficult or

⁶ BellSouth is aware that legislation is now pending in Congress to place further constraints on billing of information services that employ the 800 SAC in call delivery. See, e.g., S. 2526, introduced by Sen. Harkin, and H.R. 4802, introduced by Rep. Gordon, which would prohibit the inclusion of 800 information service charges on a bill for local exchange or toll service.

impossible to identify the filed rate applicable to transmission of a specific information service. These services cannot be blocked and, when submitted for billing by the LEC, are indistinguishable from other regulated "deniable" toll call types.⁷

BellSouth would support a recommendation to lawmakers calling for the elimination of this exemption. In the absence of remedial legislation, it is imperative that the Commission assume a more active role in monitoring information services offered pursuant to a tariffed charge. At a minimum, reasonable and uniform standards must be established to govern tariff filings applicable to such services. A requirement of informational tariff filings, similar to that for operator service providers,⁸ should also be considered. The Commission must review applicable tariffs and obtain appropriate cost support where rates appear to fall outside a zone of reasonableness. Finally, the Commission should prohibit by rule any compensation to the IP for services delivered under arrangements of this

⁷ Of particular concern is the continuing migration of services (in particular, adult entertainment programming) to international numbers. These offerings avoid many of the requirements applicable to pay-per-call services provided using the 900 SAC. Moreover, because they cannot be differentiated from standard transmission charges, they will receive ordinary billing treatment (absent notice to the LEC).

⁸ See 47 U.S.C. §226(h)(1)(A).

type.⁹

4. Most of the Rule modifications contained in the FNPRM will produce some benefit and are supported by BellSouth.
-

As heretofore discussed, BellSouth believes that more comprehensive measures are necessary if continuing problems in the pay-per-call/information services industry are to be effectively addressed. Nevertheless, rule changes proposed by the Commission (with some exceptions) will help to curb the most egregious violations observed recently and on that basis are supported by BellSouth. BellSouth's views on the specific changes proposed are as follows:

Section 64.1501

⁹ One of the more creative applications of the "tariffed charge" exemption operates in the following manner:

- a. Customer dials 901-xxx-xxxx (any POTS number may be used), which is advertised for the information service.
- b. Recorded message instructs customer to dial a second number, configured as 10XXX+0+area code+number to reach information service.
- c. Customer dials designated number and receives preamble message. Call is not branded nor is customer connected to an operator. Preamble instructs customer to hang up to avoid incurring a charge.
- d. Customer who remains on line is connected to the information service. Call is submitted to LEC under Operator Assisted heading and rated person to person.

An interesting feature of this arrangement is that the information service cannot be reached without dialing the specific 10XXX code identified in the recorded message. Any other dialing pattern will route the call to another recorded message which advises the caller to contact the IXC operator for assistance. Aggregator blocking of calls provisioned through a 10XXX access code is, of course, generally not permitted.

BellSouth concurs in the proposed modifications to Section 64.1501, which require a writing to complete presubscription agreements and specify that individuals executing such agreements possess the legal capacity to contract. In lieu of this change, however, BellSouth prefers a requirement that billing for information services offered pursuant to a presubscription or comparable arrangement be accomplished through a credit or charge card as defined in subsection (b)(5). BellSouth believes this alternative would afford greater protection to minors while eliminating the burden on consumers and legitimate providers associated with securing and maintaining written agreements.

Section 64.1504

BellSouth supports proposed modifications to this section, which preclude the use of automatic number identification (ANI) as a billing mechanism absent agreement by the subscriber of record. Other amendments proposed for this section would to some degree limit use of the 800 SAC for delivery of information services and for that reason are likewise favored.¹⁰

Section 64.1510

BellSouth opposes the modifications contained in

¹⁰ Certain 800 numbers are used to access services like voice messaging and facsimile. BellSouth does not believe these offerings constitute "information services" requiring a presubscription or comparable arrangement and on that basis concurs in proposed modifications to subsections (b) and (c).

subsection (b)(1), which arguably require a LEC billing agent to obtain evidence of a presubscription agreement before billing any information service; and to insure that the signatory of the agreement is likewise the party billed. As previously stated, BellSouth has no contractual relationship with IPs, whose identities are generally unknown. Thus BellSouth would have no means for readily obtaining a presubscription agreement or for learning the identity of the customer signing such an agreement. To the extent this information could be ascertained, the administrative costs of doing so--and maintaining copies of agreements for future verification--could adversely impact the viability of BellSouth's billing and collection service. This provision is further objectionable because it requires BellSouth and other billing LECs to judge the legal sufficiency of presubscription agreements adopted by IPs.

Alternatively, BellSouth would not object to retention of these requirements, provided the rule is further amended to stipulate that carriers functioning solely as billing agents may rely upon the representation of an IXC/billing clearinghouse that a valid agreement exists which has been signed by the party to be billed.

BellSouth supports amendments to Section 64.1510 which mandate the segregation of presubscribed information service charges on billing statements. BellSouth does not favor a requirement to add IP name and telephone number, which

proposal was earlier considered and rejected by the Commission.¹¹ If such an amendment is adopted, the Commission must impose on IXCs the responsibility for providing IP information to the billing LEC and insuring its continued currency. Similarly, the "telephone number actually dialed"¹² must be provided by the IXC/billing clearinghouse to the LEC, since the latter has no independent means of obtaining this information. Finally, while BellSouth does not object to a customer notification that non-pay-per-call information services (i.e., those which do not employ the 900 SAC) may be subject to involuntary blocking, the Commission should be mindful that this measure can only be effectuated by IPs. As previously stated, BellSouth has no ability to identify and selectively block information programming offered over dialing arrangements other than 900.¹³

¹¹ "Full identification of IPs will be available through the IXC's toll-free pay-per-call information lines, the numbers of which will be printed on each bill showing pay-per-call charges. In light of this easy means of obtaining identifying information, we see no reason to impose upon carriers or IPs the added costs of disclosing material that the IXC is already required to disclose. There is no evidence to suggest that a customer's knowledge of an IP's name or address will influence an initial decision whether to pay or contest pay-per-call charges." Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act, CC Docket No. 93-22, RM-7990, Report and Order, 8 FCC Rcd 6885 (1993).

¹² 47 U.S.C. §64.1510(b)(2)(iii) (proposed).

¹³ The Interactive Services Association (ISA), which represents the IP industry, is coordinating development of a global blocking database, which will block transmission of

CONCLUSION

BellSouth believes that many IPs are scrupulous in their observance of legal and regulatory requirements governing the delivery of pay-per-call and other information services. Nevertheless, deceptive--and in some cases unlawful--practices persist in the industry, fully justifying the Commission's concern. The FNPRM represents a commendable effort to address these problems and most of the changes proposed will have some remedial effect. Nevertheless, BellSouth is convinced that more comprehensive measures are necessary to protect consumers and preserve the integrity of toll free calling. For this reason, BellSouth

selected information programming to individual subscriber lines. BellSouth and other LECs are supportive of this effort.

urges the Commission to consider sponsorship of legislative initiatives which would eliminate current exemptions for information services delivered over the 800 SAC or pursuant to a tariffed charge.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this 11th day of October, 1994 served all parties to this action with a copy of the foregoing COMMENTS by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties listed on the attached service list.

Juanita H. Lee

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